IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.03.2008

CORAM

THE HONOURABLE MR.JUSTICE F.M. IBRAHIM KALIFULLA

W.P.No.22086 of 2007

Suriya Sweets
rep by its Partner
Mrs. Parvathy Ramesh ... Petitioner

vs.

1. The State of Tamil Nadu
rep. by its Secretary to Government,
Department of Housing and Urban Development,
Fort St. George, Chennai 600009.

2. Chennai Metropolitan Development Authority
rep. by its Member Secretary,
Thalamuthu Natarajan Building,
No.1, Gandhi Irwin Road,
Egmore, Chennai 600008.

3. Sundaram Brake Linings Ltd.,
rep. by its Deputy Financial
Controller & Secretary,
No.81, First Main Road,
R.A. Puram, Chennai-28. ... Respondents

Writ petition filed under Article 226 of the Constitution of India for issuance of writ of Certiorarified Mandamus Calling for the records pertaining to the discontinuance notice issued by the 2nd respondent in his letter No.ES1/11721/2002 dt 8.9.2006 and as confirmed by the 1st respondent in G.O.(D) No.151 dt 12.6.2007 and quash the same and consequently forbear the respondents and their men from interfering with the peaceful running of the business of selling sweets, vegetables and fruits under the name and style of M/s.Surya sweets in the premises bearing Door No.66/47, 1st Main road, R.A.Puram, Chennai 28 till the disposal of the permission/Regularisation application dated 23.5.2002 by the 2nd respondent.

For petitioner : Mr.K. Premkumar
For respondents : Mr. P. Subramani
Government Advocate [for R-1]
Mr. C. Kathiravan [for R-2]
Mr. P.R. Raman [for R-3]

O R D E R

The petitioner seeks to challenge the proceedings of the first and second respondents. By order dated 12.6.2007 in G.O.(D) No.151, the first respondent has confirmed the Discontinuance Notice issued by the second respondent in his letter No.ESI/11721/2002 dated 08.09.2006. The petitioner is running a commercial activity at No.66/47, I Main Road, Raja Annamalaipuram, Chennai-28, where it is engaged in "selling sweets, fruits and vegetables to the intending customers". There was an earlier round of litigation wherein in a writ petition preferred by the third respondent herein in W.P.No.35483 of 2002 an order came to be passed by the Division Bench of this Court dated 7.1.2005. In that order the Division Bench has held as under:

> "24. Moreover, under rule 7(1)(x) of the Development Control Rules, the number of employees should not exceed 25, but, as seen from the documents submitted by Suriya Sweets when it applied for consent from the Pollution Control Board show that the number of employees in Suriya Sweets exceeds 25. We therefore hold that Suriya Sweets is not a cottage industry and the location of the commercial establishment in the primary residential use zone is not permissible.
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> 25. As far as the permission granted by the Corporation of Chennai is concerned, it was issued as a licence for trading. We find the Chennai City Municipal Corporation Act, 1919 was enacted prior to the Town and Country Planning Act, 1971 as well as Pollution Control Acts. The Chennai City Municipal Corporation Act has not made any distinction between the primary residential use zone and other zones and the fact that permission has been obtained from the Chennai Corporation to trade in the area in question is not at all material as Suriya Sweets, in its location, has violated the provisions of the town and Country Planning Act which is later enactment. Hence, we direct the second respondent (CMDA) to take necessary action under the Town and Country Planning Act, 1971." (underlining is mine)

2. Pursuant to the said Division Bench Order, the present impugned orders have been passed by the first and second respondents. The second respondent in its order dated 8.9.2006 has held that the business of running sweet stall, vegetables and fruits at Door No.66/47, 1st main Road, Raja Annamalaipuram in a residential building is against the Development Control Rules and that for any change of use prior permission from the competent authority is needed. Hence, The petitioner was directed to discontinue the usage of the building.

3. As against the above order, the petitioner preferred an appeal and the appellate authority viz., the first respondent herein passed the impugned G.O.(D).No.151 dated 12.06.2007 wherein it has held

that in the primary residential use zone, petty shops dealing with daily essentials and trades declared as non-offensive, occupying a floor area not exceeding 20 square meters, cottage industries with installations not higher than 5 HP with a maximum number of 25 employees alone is permissible, but the petitioner has put into use 1043 square meter of area for trading activity in the ground floor and the first floor with 40 persons working at the time of inspection by the second respondent. It is also held that some payment of regularization fee of Rs. 1,56,457.50 was collected from the owner of the building cannot be a ground for continuation of the violation committed by the petitioner. The Discontinuance Order issued by the second respondent dated 8.9.2006 was therefore confirmed by the impugned order.

4. Assailing the Order, Mr. Premkumar, learned counsel for the petitioner by making a specific reference to section 56(4)(a) and (b)(ii) of the the Tamil Nadu Town and Country Planning Act, 1971, would contend that the petitioner has filed an application for regularization as early as on 23.05.2002 of the alleged land/house violation and that so long as that application is pending the impugned discontinuance order cannot be made. According to the petitioner, his application under Section 49 of the Act for regularization of the unauthorized construction of the building is pending and that by virtue of Section 56(3)(4) of the Act during the pendency of the said application the impugned orders could not have been passed.

5. Mr. P.R. Raman, learned counsel appearing for the third respondent on the other hand contended that the petitioner having admittedly caused a serious violation by running a commercial venture in a primary residential use zone cannot be permitted to continue such violation by relying upon Section 49 read along with 56(3) and 47 of the Act. The learned counsel by making reference to the earlier order of the Division Bench dated 7.1.05 in W.P.No.35483 and 37462 of 2002 would contend that the Division Bench in its order made it clear that the so called Suriya Sweets run by the petitioner in a primary residential use zone is not permissible with a further direction to the second respondent to take necessary action under the Act and therefore the impugned order issued by the second respondent for discontinuance of the use of the land and the confirmation of the same by the first respondent is perfectly justified and it does not call for any interference.

6. Having heard the learned counsel on either side and on a perusal of the earlier order of the Division Bench dated 7.01.2005 I find that what was carried on by the petitioner in the premises in question was wholly impermissible in law and before reaching the said conclusion, the Division Bench made a detailed consideration of the claim of the petitioner as regards its right to carry on its commercial and trading activity in the premises in question and had held that such a commercial activity of the petitioner having been carried on in a primary residential zone the same cannot be permitted to be continued. The Division Bench therefore, directed the second

respondent to take necessary action under the Act for the violation committed by the petitioner. It is therefore no longer open to the petitioner to justify its business activity carried on in the premises in question which is admittedly situated in a Primary Residential Zone.

7. As far as the petitioner's contentions based on Section 49 and 56 of the Act, I am of the view that the said contention cannot also be sustained. The application dated 23.5.2002, is primarily for the deviated constructions made by the owner of the premises in question. For such deviated constructions, the owner of the premises has sought for regularization. While describing the nature of construction, it is true that it is also mentioned therein as to the total extent, where such commercial cottage industrial activities were being carried on. As rightly pointed out by the learned counsel for the third respondent, the petitioner is stated to have been carrying on commercial activities in the ground floor to the extent of 1043.05 Sq.Mtrs. and Cottage industrial activities in an area about 900 Sq. Mtrs., as per the rules the permissible floor area for carrying on a trading activity is only to an extent of 20 Sq. Mtrs. Therefore the deviation in the land use is admittedly to an extent of 1029.26 Sq. Mtrs. In the impugned orders it is stated that the total extent where such activities are being carried on was to an extent on 1043.05 Sq.Mtrs. The purpose of providing the safe guard under Section 56(4) to suspend the effect of any notice issued under Section 56(1) and (2) of the Act is to ensure that during the pendency of the application for regularization, filed under Section 49 of the Act, any construction made in violation of the rules or any unauthorized use of the land or building should not be altered and thereby cause any serious prejudice to the concerned owner of the land. Such a safeguard is provided apparently with a view to protect the interest of the applicant in as much as if the relaxation is ultimately granted and if the structure is demolished in the meantime, the very purpose of the appeal remedy itself may become otiose. But such a safeguard provided in the statute cannot be allowed to be misused or abused by blatant violators. In other words the safe guard provided in the statute cannot be applied in abstract in all cases, unmindful of the ill-effects that will be caused to the public at large. To put it differently if a blatant violator of the law attempts to take advantage of the safeguard provided in the statute which would otherwise be detrimental to the interest of the public at large, the court cannot remain a silent spectator or express its helplessness. As in the case on hand, the petitioner cannot be permitted to perpetuate a violation which has already been found to be existing by an order of the Division Bench of this Court which has become final and conclusive and in fact in paragraph 25 of the order, the Division Bench has finally concluded that what was carried on by the petitioner in the premises in question is not a cottage industry and that the commercial establishment of the petitioner is in a primary residential zone, which is not permissible in law.

8. The petitioner by seeking to rely upon the regularisation application on payment of some fee wants to use the land and building

of a larger extent than what is permissible under the Regulations and thereby frustrate the order of this Court which has become final and conclusive. The illegality committed by the petitioner has been examined and analysed in detail by the Division Bench which concluded that such illegality cannot be permitted to continue. In the circumstances when the first and second respondents have only passed the impugned orders in compliance of the earlier direction of the Division Bench of this Court, the present attempt of the petitioner in seeking to quash the proceedings of the second respondent as confirmed by the G.O. Of the first respondent cannot be permitted to be made, especially when the violation caused by the petitioner in respect of the Town and Country Planning Act, in particular as regards the usage of the land and building, is demonstrated to be not permissible in law. If The petitioner is allowed to continue to perpetuate such illegality detriment to the interest of the public at large who are all none other than the residents living in the primary residential zone, as declared by the first and second respondents under the provisions of the Town and Country Planning Act, the same will amount to paying a premium for the blatant violation of law committed by the petitioner.

9. For all the above stated reasons, I do not find any scope to interfere with the impugned order of the second respondent. The writ petition therefore, fails and the same is dismissed. Connected M.P. is closed. No costs.

Ggs

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1. The Secretary to Government,
   Department of Housing and Urban Development,
   Fort St. George, Chennai 600009.

2. The Member Secretary,
   Chennai Metropolitan Development Authority
   Thalamuth Natarajan Building,
   No.1, Gandhi Irwin Road,
   Egmore, Chennai 600008.

- 1 cc to Mr. P. R. Raman, Advocate SR No. 17945
- 1 cc to Mr. C. Karthiravan, Advocate SR No. 17687
- 1 cc to Mr. Premkumar, Advocate SR No. 17688

JS(CO)
SR/27.5.2008

Order in:
W.P.No.22086 of 2007
and M.P.No.1 of 2007